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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 ERIC KITAZI,

11 Plaintiff,

12 v.

13 SELLEN CONSTRUCTION
14 COMPANY INC, a corporation;
15 ROBERT P. McCLESKEY, Director in
his individual and corporate capacities
and on behalf of his marital community
with JANE DOE McCLESKEY,

16 Defendants.
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CASE NO. C16-1651-MJP

ORDER DENYING
DEFENDANT’S MOTION FOR
REMITTITUR

18 THIS MATTER comes before the Court on Defendant’s Motion for remittitur pursuant to
19 Fed. R. Civ. P. 59. (Dkt. No. 86.) Having considered the Motion, the Response (Dkt. No. 97),
20 the Reply (Dkt. No. 96) and all related papers, the Court DENIES the Motion. The Court
21 declines to hear oral argument on this matter.

22 **Background**

23 Plaintiff Eric Kitazi filed this action against Defendant Sellen Construction Company,
24 Inc. (“Sellen”) for employment discrimination. Plaintiff was born and raised in Kenya, and

1 immigrated to the United States in 1999. Plaintiff alleged that, during his employment with
2 Sellen, he was harassed and discriminated against on the basis of his race and national origin. In
3 particular, Plaintiff alleged that he was repeatedly followed, stared at, regarded with suspicion,
4 and subjected to demeaning comments on jobsites, including in the presence of foremen, leads,
5 and supervisors. Plaintiff testified that in September 2014, shortly after the outbreak of the
6 Ebola virus in West Africa, a worker yelled “Ebola!” in his presence, inciting laughter from
7 others. (Dkt. No. 94 at 29-30.) Plaintiff testified that on another occasion, a worker referred to
8 him as “monkey butter,” a term he understood to be racially derogatory. (Id. at 25-26.) In
9 November 2014, shortly after he reported concerns about his treatment to management, Plaintiff
10 was laid off. (Id. at 39.)

11 At trial, Plaintiff described the effect that the discrimination had on him. He testified, “I
12 thought I was going crazy,” “I thought I was going out of control,” and “I could not relate to
13 what my mind was doing and what I was experiencing.” (Id. at 41.) Plaintiff explained that he
14 dealt with these experiences through meditation, and that he “chose to be patient, to persevere”
15 instead of “being bitter and angry and going out of control.” (Id.) Nevertheless, Plaintiff
16 explained he was still not completely over the experience, and still gets flashbacks each day
17 when he drives past construction sites. (Id. at 42.) Specifically, Plaintiff testified, “[w]hen I
18 drive through construction sites, I see myself there. . . . I see myself physically there. . . . I see the
19 name-calling, being made fun of. All those things always come back. Even with meditation,
20 they always come back.” (Id.) Plaintiff did not seek economic damages, but requested non-
21 economic damages for emotional distress, humiliation, and other intangible harms.

22 After a four-day jury trial in December 2017, the jury found in Plaintiff’s favor on his
23 hostile work environment and retaliation claims and awarded non-economic damages in the
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1 amount of \$500,000 for emotional distress. (Dkt. No. 81.) Defendant now moves for remittitur
2 of the jury's award. (Dkt. No. 86.)

3 **Discussion**

4 Defendant contends that the jury's award of \$500,000 should be reduced because it is
5 excessive and unsupported by the evidence presented at trial. (Dkt. No. 86 at 3.) In particular,
6 Defendant contends that Plaintiff's testimony was the sole evidence presented to the jury
7 concerning his emotional distress, and that Plaintiff neither identified physical symptoms nor
8 sought medical treatment related to the emotional distress. (Id. at 3-4.)

9 A jury's award of damages is entitled to great deference, and should generally be upheld
10 unless (1) the amount is grossly excessive or monstrous; (2) the evidence clearly does not
11 support the award; or (3) the award could only have been based on speculation or guesswork.
12 Blanton v. Mobil Oil Corp., 721 F.2d 1207, 1216 (9th Cir. 1983) (citations omitted); In re First
13 Alliance Mortgage Co., 471 F.3d 977, 1001 (9th Cir. 2006). The Ninth Circuit does not require
14 objective evidence of emotional distress, and has repeatedly held that a plaintiff's testimony
15 alone is enough to support a jury's award of emotional distress damages. See Zhang v. Am.
16 Gem. Seafoods, Inc., 339 F.3d 1020, 1040-41 (9th Cir. 2003); Passantino v. Johnson & Johnson
17 Consumer Prods., Inc., 212 F.3d 493, 513 (9th Cir. 2000); see also Bunch v. King County Dept.
18 of Youth Servs., 155 Wn.2d 165, 181 (2005) (en banc) ("[E]vidence of anguish and distress . . .
19 can be proved by the plaintiff's own testimony. . . . Corroborative evidence is certainly helpful,
20 but it is for the jury to weigh the credibility of the witness and determine if he in fact suffered
21 mental anguish.")


22 The Court concludes that the jury's damages award is neither unsupported by evidence,
23 nor excessive. While Defendant suggests that Plaintiff failed to offer "corroborating testimony,"
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1 such testimony clearly is not required. See Zhang, 339 F.3d at 1040-41; Passantino, 212 F.3d at
2 513; Bunch, 155 Wn.2d at 181. This is particularly true in a case for employment discrimination
3 based on national origin, where a plaintiff's friends and family may be abroad, and corroborating
4 testimony and evidence difficult to come by. Second, contrary to Defendant's claim that the
5 discrimination Plaintiff suffered "has had no considerable impact on his life" (Dkt. No. 97 at 4),
6 Plaintiff testified that he suffers from daily flashbacks. (Dkt. No. 96-1 at 14.) Emotional distress
7 need not be "severe" to support a jury's award for emotional damages, and the jury "obviously
8 could have gleaned that he was greatly hurt and humiliated." Zhang, 339 F.3d at 1040; see also
9 Passantino, 212 F.3d at 513 ("Washington law contains no severity requirement as a
10 precondition to awarding compensatory damages.").

11 Having found that the jury's damages award was not improper, the Court DENIES
12 Defendant's Motion.

13 The clerk is ordered to provide copies of this order to all counsel.

14 Dated January 30, 2018.

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17 Marsha J. Pechman
United States District Judge
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